

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

May 22, 2024

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

GUENTER: SCHIER (DECEASED
WASHINGTON STATE LAND OWNER
MISNOMERED AS SCHIER, GUENTER
W. SCHIER, ALSO SHOWN OF RECORD
AS GUENTER WERNER) “DECEDENT”);
KELSEY: SCHIER, (“Heir/Beneficiary),

Claimant,

v.

OPTION ONE MORTGAGE LOAN TRUST
2007-4 ASSET-BACKED CERTIFICATES,
SERIES 2007-4; WELLS FARGO,
NATIONAL ASSOCIATION AS TRUSTEE
FOR OPTION ONE MORTGAGE LOAN
TRUST 2007-4, ASSET-BACKED
CERTIFICATES, SERIES 2007-4, NEWREZ
MORTGAGE, LLC; PHH MORTGAGE
SERVICES, INC.; COVIUS d/b/a Nationwide
Title Clearing, LLC et al; WESTERN
PROGRESSIVE; NETTY BANGALA, VICE
PRESIDENT OF SAND CANYON
CORPORATION f/k/a Option One Mortgage
Corporation (“Robo-Signor”),

Defendants.

No. 1:24-CV-03029-SAB

**ORDER GRANTING
DEFENDANTS’ MOTION TO
DISMISS**

1 Before the Court are Defendants' Motion to Dismiss Plaintiff's Complaint,
 2 ECF No. 21; Plaintiff's Motion to Overrule or Sustane [sic], ECF No. 24,
 3 Plaintiff's Motion to Hear Motion to Dismiss ECS21 and Response to Motions to
 4 Dismiss ECS 31 with Oral Argument, ECF No. 32, and Motion to Expedite, ECF
 5 No. 33. The motions were heard without oral argument.¹

6 Plaintiff is proceeding *pro se*. Defendants are represented by Nicholas
 7 Reynolds and Robert Wayne Norman Jr.

8 Plaintiff filed his Complaint on February 28, 2024. It appears that Plaintiff is
 9 seeking to stop the foreclosure of property that had been purchased by Plaintiff's
 10 father, Guenter W. Schier. Mr. G. Shier had a mortgage that was secured by a
 11 Deed of Trust. Mr. G. Schier passed away on or about January 31, 2023.² No
 12 payments have been made on the mortgage loan since February 1, 2023.
 13 Plaintiff is bringing the following claims: (1) violation of the federal Real Estate
 14 Settlement Procedures Act; (2) violation of the Fair Credit Reporting Act; (3)
 15 violation of the Fair Debt Collection Practices Act; (4) Quiet Title; (5) Permanent
 16 Injunctive Relief; (6) violation of the Washington Consumer Protection Act; and
 17 (7) common law fraud.

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 19 ¹ The Court has determined that oral argument is not necessary. *See Local Rule*
 20 *7(i)(3)(iii)*. Therefore, Plaintiff's Motion for Oral Argument, ECF No. 32, is
 21 dismissed as moot.

22 ² Plaintiff indicates that he is the "attorney-in-fact" representing the interests of the
 23 Estate of Guenter W. Schier. Plaintiff does not appear to be a licensed member of
 24 the Washington State Bar Association or the Federal bar. Under Local Rule 83.6,
 25 Plaintiff, appearing pro se, is not permitted to represent the Estate of Guenter W.
 26 Schier. *See also Johns v. County of San Diego*, 114 F.3d 8974, 876-877 (9th Cir.
 27 1997) (explaining a non-attorney may appear pro se on his own behalf but has not
 28 authority to appear as an attorney for others).

1 Defendants assert this Court does not possess subject matter jurisdiction
 2 over this action because of Plaintiff's lack of standing. The Court agrees. Here,
 3 Defendants have shown that Plaintiff did not obtain letters of administration and no
 4 personal representative of the estate was appointed by the state courts. Until an
 5 estate is closed, the heirs may not treat estate real property as their own. *In re*
 6 *Estate of Jones*, 152 Wash.2d 1, 14 (2004). As such, Plaintiff lacks standing to
 7 bring this action on behalf of the Estate of Schier as a matter of law.³ And Plaintiff
 8 has no standing to bring this action on behalf of himself.

9 In addition, Plaintiff failed to properly serve Defendant Wells Fargo Bank,
 10 Defendant NewRez LLC, PHH Mortgage Corporation, Defendant Western
 11 Progressive, and Defendant Netty Bangala. A federal court is without personal
 12 jurisdiction over a defendant unless the defendant has been served in accordance
 13 with Fed. R. Civ. P. 4. *S.E.C. v. Ross*, 504 F.3d 1130, 1138 (9th Cir. 2007) (noting
 14 that in the absence of proper service of process, the district court has no power to
 15 render any judgment against the defendant's person or property unless the
 16 defendant has consented to jurisdiction or waived the lack of process). In response
 17 to Defendants' assertions that Plaintiff failed to properly serve them, Plaintiff
 18 submitted Declarations of Due Diligence and Proof of Service. ECF Nos. 25-30.
 19 However, these Declarations do not establish that the above-named Defendants
 20 were properly served.

21 Finally, the claims for relief set forth in Plaintiff's Complaint do not
 22 adequately plead specific facts necessary to state a claim upon which relief may be
 23 granted under Fed. R. Civ. P. 12(b)(6).

24 The Court grants Defendants' Motion to Dismiss. In addition, the Court
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26 ³ The Court rejects Plaintiff's argument that probate was not necessary because
 27 both he and his father have the right to adverse possession, presumably of the
 28 property that is subject to the Deed of Trust.

1 declines to grant Plaintiff leave to amend his Complaint. Plaintiff lacks standing to
2 bring an action on behalf of his father's Estate. His Complaint cannot possibly be
3 cured by allegations of additional facts. *See Lopez v. Smith*, 203 F.3d 1122, 1130
4 (9th Cir. 2000).

5 Accordingly, **IT IS HEREBY ORDERED:**

- 6 1. Defendant's Motion to Dismiss, ECF No. 21, is **GRANTED**.
- 7 2. All pending motions are denied as moot.
- 8 3. The Clerk of Court is directed to **close** the file.

9 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order,
10 forward copies to Plaintiff and counsel, and **close** the file.

11 **DATED** this 22nd day of May 2024.



15 A handwritten signature in blue ink that reads "Stanley A. Bastian".

16 Stanley A. Bastian
17 Chief United States District Judge
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